

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Sheri Speer,

Complainant

against

Docket #FIC 2020-0633

City Clerk, City of Norwich;
and City of Norwich,

Respondents

August 10, 2022

The above-captioned matter was heard as a contested case on November 4, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.

2. It is found that by letter dated October 12, 2020, and addressed to "FOIA Officer/ Keeper of the Records", the complainant made a request to the respondents for copies of the following records:

[a] all retainer agreements and contracts for services between the City of Norwich and any or all of its applicable Boards or Agencies between it and Brown Jacobson PC, Lloyd Langammer, Donna Skaats, and/or Aimee Wickless[;]

[b] all resolutions or acts of the City Council appointing Brown Jacobson PC, Lloyd Langammer, Donna Skaats, and/or Aimee Wickless as Corporation Counsel or Assistant Corporation Counsel between the time period January 1, 2010 to present[;]

[c] all bond or surety entered into or given by appointing Brown Jacobson, PC, Lloyd Langammer, Donna Skaats, and/or Aimee

Wickless between the time period of January 1, 2010 to the present[;]

[d] all professional liability insurance policies covering Brown Jacobson, PC, Lloyd Langammer, Donna Skaats, and/or Aimee Wickless between the time period of January 1, 2010 to the present for their acts or services on behalf of or in the service of the City of Norwich[; and]

[e] all orders or instructions from Corporation Counsel to Brown Jacobson, PC, Lloyd Langammer, Donna Skaats, and/or Aimee Wickless assigning them to specific or general duties, or pertaining to individual case files between January 1, 2010 to the present.¹ (“October 12th request”).

3. It is found that on or about October 20, 2020, the respondent City Clerk acknowledged the October 12th request. It is found that the City Clerk, who was tasked with coordinating responses to records requests for the respondent City of Norwich (“City”), proceeded to search for records responsive to such request. It is also found that the City Clerk forwarded the October 12th request to various departments to process.

4. It is found that by letter dated December 1, 2020, the respondents provided the complainant with copies of records responsive to the requests described in paragraphs 2[a] and 2[b], above. It is found that the respondents informed the complainant that they did not have records responsive to the request described in paragraph 2[c], above. In addition, it is found that the respondents informed the complainant that the disclosure of any records responsive to the requests described in paragraphs 2[d] and 2[e], above, would be an invasion of privacy and/or would disclose attorney-client privileged communications. It is also found that the respondents informed the complainant that searching for any records responsive to the requests described in paragraphs 2[d] and 2[e], above, would be unreasonably burdensome.

5. By letter received December 10, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with copies of the records described in paragraph 2, above.

6. At the time of the request, §1-200(5), G.S., provided:

¹ It is found that, as of the November 4, 2021 hearing, Michael Driscoll, a private attorney with Brown Jacobson, P.C., was serving as Corporation Counsel. It is also found that Aimee Wickless, a private attorney with Brown Jacobson, P.C., was serving as Assistant Corporation Counsel.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

‘[p]ublic records or files’ means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.³

7. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

9. It is found that the records responsive to the requests described in paragraphs 2[a], 2[b], 2[c] and 2[d], above, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. With respect to the requests described in paragraphs 2[a] and 2[b], above, at the hearing, the respondents testified, and it is found, that they provided the complainant with copies of all records they maintained that were responsive to such requests.

11. With respect to the request described in paragraph 2[c], above, the respondents testified that it is not customary for the City to have bonds and sureties with attorneys and law firms; nevertheless, they searched for responsive records and did not locate any. It is found that the respondents do not maintain bonds and sureties responsive to the request described in paragraph 2[c], above.

12. With respect to the request described in paragraph 2[d], above, the respondents testified that the City’s professional liability insurance policies do not cover services performed by attorneys and law firms. The respondents also testified that the attorneys and law firms listed in paragraph 2[d], above, have not provided the respondents with copies of their own professional liability insurance policies. It is found that the respondents do not maintain any records responsive to the request described in paragraph 2[d], above.

³ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

13. It is found that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged with respect to the records described in paragraphs 2[a], 2[b], 2[c] and 2[d], above.

14. With respect to the request described in paragraph 2[e], above, without conceding that they maintain responsive records, at the hearing and in a post-hearing brief, the respondents first contended that Corporation Counsel is not a “public official” for purposes of the FOI Act, and therefore, any such records are not public records subject to disclosure. The respondents also contended that a search for responsive records would require “analysis” of every communication sent to and/or from Corporation Counsel to determine whether records were responsive, which is not required under the FOI Act.

15. With respect to the respondents’ contention that Corporation Counsel is not a “public official”, §1-200(1), G.S., defines “public agency” as:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, “judicial office” includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any “implementing agency”, as defined in section 32-222.

16. In Londregan v. Freedom of Information Commission, 1994 WL 385951 (Superior Court, Judicial District of New London, July 13, 1994), the court concluded that a private attorney, when acting in his capacity as New London’s Director of Law, is a public official, and thus a public agency. The court found that it was clear from New London’s City Charter that the attorney, as New London’s Director of Law, occupied an established office (Department of Law) and performed a governmental function. The court also found that the attorney acted for and represented New London on an ongoing and continuous basis. In addition, the court found that records maintained and kept by the attorney in connection with his capacity as New London’s Director of Law were public records subject to disclosure under the FOI Act. *Compare to* Hallas v. Freedom of Information Commission, 18 Conn. App. 291 (1989), cert. denied, 212 Conn. 804 (1989), where the court held that a private law firm acting in the capacity of a municipality’s bond counsel, and not as an advocate for the municipality, was not the functional equivalent of a public agency.

17. It is found that Chapter XVI (Other City Officers) of the City's Charter provides, in relevant part:

Sec. 1 – Corporation counsel.

There shall be a corporation counsel who shall be appointed by the city council as of the first Tuesday of January, 1978 and biennial thereafter. He shall be an elector of the City of Norwich and an attorney of at least five (5) years' practice. He shall be the legal advisor of the city council, the chief executive officer of the city, and all other departments, officers, boards, commissions or agencies of the city in all matters affecting the interests of the city, and shall, upon request, furnish them with a written opinion on any question of law involving their respective powers and duties. He shall appear for and protect the rights of the city in all actions, suits or proceedings brought by or against it or any of its departments, officers, boards, commissions or agencies. He shall have the power, without prior approval of the city council to compromise and settle any claims by or against the city in an amount equal to, or less than, twelve thousand (\$12,000.00) dollars. He shall also have the power, with the approval of the chief executive officer of the city, to appeal from orders, decision or judgments in such cases and with the approval of the city council, compromise and settle any claims by or against the city in an amount greater than twelve thousand (\$12,000) dollars. He shall prepare and approve all forms of contract and other instruments to which the city is a party or in which it has an interest. He shall attend all meetings of the city council. He shall render written opinions on all resolutions, other than those purely ceremonial in nature, prior to the effective date. The city council shall have power to employ additional counsel and other employees to aid the corporation counsel as the city council deems necessary. If the corporation counsel has an interest in any matter which is in substantial conflict with the proper discharge of his duty, or if, in his opinion, it would be improper for him to act in any matter and shall disqualify himself there from, the city council shall have the power to retain special counsel to act in place of the corporation counsel in such matter. Each department, officer, board, commission and agency of the city is prohibited from engaging its own counsel....

18. It is found that Corporation Counsel occupies an established position and performs a governmental function pursuant to the City's Charter. It is also found that Corporation Counsel acts for and represents the City on an ongoing and continuous basis. Accordingly, it is found that Corporation Counsel is a "public official" and therefore a "public agency" under §1-200(1), G.S. It is further found that, to the extent Corporation Counsel maintains records responsive to

the request described in paragraph 2[e], above, such records are “public records” under §§ 1-200(5) and 1-210(a), G.S.

19. With respect to the respondents’ contention that a search for responsive records would require “analysis”, the Appellate Court in Wildin v. Freedom of Information Commission, 56 Conn. App. 683, 686-687 (2000), found that the records request did not require the agency to do research because the requester specifically identified the records he sought and there was no analysis required to search for the records; nor was the agency required to exercise discretion as to whether records fell within the records request. In Wildin, the requester requested “[a]ll correspondence...to or from the Mayor...and...to or from the Town Attorney...from January 1, 1996 to the present.” Here, unlike in Wildin, the complainant did not specifically identify the records she sought. It is found that a search for responsive responsive would require the respondents to do analysis or exercise discretion in order to determine whether such records contained “orders” or “instructions” and/or whether such “orders” and “instructions” related to “assigning...specific or general duties.” It is therefore found that a search for responsive records would require research.

20. Based on the foregoing, it is concluded that the respondents did not violate §§ 1-210(a) and 1-212(a), G.S., as alleged with respect to the records described in paragraph 2[e], above.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 10, 2022.



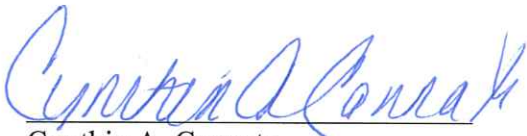
Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

SHERI SPEER, 151 Talman Street, Norwich, CT 06360

CITY CLERK, CITY OF NORWICH; AND CITY OF NORWICH, c/o Attorney
Michael P. Carey, Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.O. Box 1591,
New London, CT 06320



Cynthia A. Cannata
Acting Clerk of the Commission